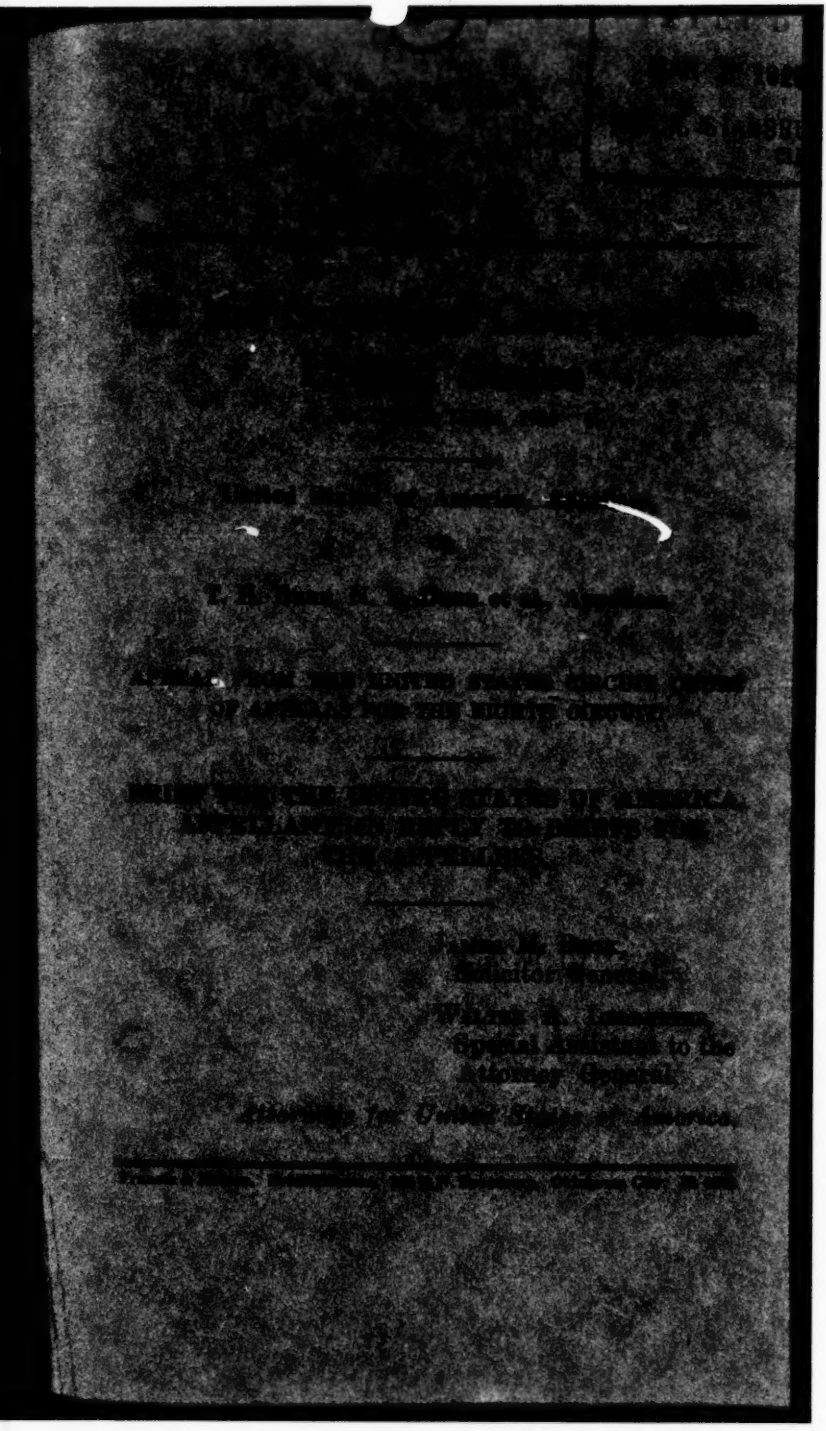

INDEX.

No. 120

In the Supreme Court of the United States

OCTOBER TERM, 1924

United States of America, Appellant,

vs.

T. H. Dunn, N. E. Dunn et al., Appellees.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR THE UNITED STATES OF AMERICA, APPELLANT, IN REPLY TO BRIEFS FOR THE APPELLEES.

First Proposition.

Since the briefs were filed for appellees in this Court the Supreme Court of Oklahoma has decided two important and controlling questions against their contentions, and thus rendered nugatory the first sixty-two and one-half pages of their briefs. On January 7, 1925, the Supreme Court of Oklahoma held (a) that

the county court of LeFlore County, Oklahoma, had the power and jurisdiction to appoint a guardian of the person and estate of the Indian minor Allie Daney, and that such guardian under that appointment had the power to sell the real estate of the minor with the approval of that court; and (b) that J. J. Eaves, the curator of the estate of Allie Daney under the appointment by the United States court for the Indian Territory, before Oklahoma was admitted into the Union, did not have the exclusive control and management of her estate and was not the sole and exclusive authority by which the real estate of the minor could be sold.

In the brief for the appellees the contention is stressed that the appointment of A. N. Thomas as guardian of Allie Daney on July 24, 1911, by the County Court of LeFlore County, was illegal and void; that the estate of Allie Daney was not in any way bound by the oil and gas lease executed on the 18th or 19th of August, 1913, by A. N. Thomas as such guardian to T. H. Dunn and J. Robert Gilliam, and that the lessees therein acquired no rights under the lease; and hence, that the lease was procured by fraud in that the lessees bribed the guardian to execute it furnished no cause of action in a court of equity to cancel the lease or to hold the lessees to an accounting for the profits accruing to them from the lease.

Counsel for the appellees say it is undisputed that A. N. Thomas was not the legal guardian of

the person and estate of Allie Daney when the lease was executed, and that the execution of the lease to Dunn and Gillam by a *pseudo* or counterfeit guardian, no matter how fraudulently obtained, created no actionable wrong in favor of Allie Daney; that Dunn and Gillam occupied no fiduciary relationship to Allie Daney and having obtained nothing from her by reason of the lease can not be held as trustees of any property, right, interest or profit acquired by them in consequence of the lease.

As a correlary to this contention counsel assert that one J. J. Eaves, who was appointed curator of the estate of Allie Daney, in the month of November, 1905, by the United States Court of the Indian Territory had the exclusive right and power to control and manage the estate of Allie Daney and to execute oil and gas leases on the land.

The contention that the appointment of A. N. Thomas, as guardian of Allie Daney, was illegal and void is largely an afterthought. In their answers in the court below they do not deny the jurisdiction of the county court of LeFlore County, Oklahoma, to appoint a guardian of the estate of Allie Daney nor do they deny the jurisdiction of that court to administer on the estate of Allie

Daney. In their answer they rather affirm than deny the jurisdiction of the county court of LeFlore County, Oklahoma, to appoint a guardian of her estate and to administer upon it. For instance, in the second paragraph of the answer of T. H. Dunn and N. E. Dunn it is alleged:

> "That the allegations in the complaint show that the county court of LeFlore County, Oklahoma, and the Secretary of the Interior have the sole and exclusive authority and jurisdiction over the alleged cause of action, if any is alleged, and this proceeding (the action by the United States to cancel the lease) is a collateral attack upon the judgment of said county court" (Trans. 45).

Again, in the eleventh paragraph of their answer T. H. Dunn and N. E. Dunn defend against the action by the United States to cancel the lease by alleging the circumstances under which it was executed, the agreement to pay bonus and royalty and that the lease was to be executed upon the blanks furnished by the Interior Department, subject to the approval of the county judge of LeFlore County, Oklahoma, where the minor and guardian lived; that a sale of the lease was regularly had before the county judge of that county and that T. H. Dunn and J. Robert Gillam were the highest bidders therefor; that the lease was regularly sold

to them and approved by the county judge, and no fraud of any character was perpetrated in securing such approval (Trans. 47).

The answer of J. Robert Gillam and his wife was even more conciliatory toward the validity of the appointment of A. N. Thomas as guardian of Allie Daney. In the fifth paragraph of their answer they say that the execution of lease by J. J. Eaves as curator for the estate of Allie Daney and the appointment and the approval thereof by the county court of Love County and the Department of the Interior made the lease a good and valid one "without the execution thereof by A. N. Thomas, the purported guardian; but if defendants are wrong in this, and if, as a matter of law, the authority of the said Eaves as curator had terminated at the time of the execution thereof by him, then and in that event, *and as a further defense herein, they say that the appointment of the said guardian A. N. Thomas was legal and valid, and that the execution of said lease by him, the said guardian, and its approval by the probate court of LeFlore County and its subsequent ratification and approval by the Indian agency at Muskogee and by the Secretary of the Interior, was valid and binding and suf-*

ficient to pass a good title to said lease'' (Trans. 53-54).

It thus appears that the appellees in the court below put but little reliance upon the invalidity of the appointment of A. N. Thomas as guardian of the Indian minor, but their answers and the evidence contained in the record shows that their main defense on the trial consisted of a denial of fraud in the procurement of the lease. It further appears that after the evidence was taken and the trial court decided against them on that issue they seized upon the alleged invalidity of the guardianship proceedings as the chief and practically the only ground upon which they hoped to sustain the judgment dismissing the government's bill.

The shift by appellees from one defense in the court below on which they were defeated to another in this Court would probably be justified if the defense which they urge here was a good one. They do not deny now the fraud in the procurement of the lease, but they insist that the fraud which Dunn and Gillam committed in procuring the lease from A. N. Thomas, as guardian, cannot be made the basis of an action to vacate the lease because Thomas was a *pseudo* or counterfeit guardian; that

his appointment was a nullity and that they got nothing by reason of the oil and gas lease which he executed to them. They insist in this connection that all the rights they got under the oil and gas lease resulted from the fact that J. J. Eaves, as curator of the Indian minor, signed his name to the lease about five months after Thomas, acting as guardian for Allie Daney, executed the same.

In the light of these contentions on behalf of the appellees the decision of the Supreme Court of Oklahoma in the case of *Allie Burton, plaintiff in error,* v. *Winnie Collie et al., defendants in error,* decided in January of this year, is important. In that case the Oklahoma Supreme Court held that the county court of LeFlore County after the admission of Oklahoma into the Union had the power and jurisdiction to appoint A. N. Thomas guardian of the Indian minor, and that under that appointment and with the approval of that court A. N. Thomas, as such guardian, had the authority to sell the real estate of the minor situated in Love County, Oklahoma. The court also held that the appointment of J. J. Eaves as curator of the estate of Allie Daney by the United States Court for the Indian Territory before Oklahoma was admitted

into the Union did not confer on him the exclusive power to sell the real estate of the minor. That decision has not been as yet officially reported. We have therefore taken the liberty to append to this brief a certified copy of the decision.

The historical background of this decision consists in the facts that prior to the admission of Oklahoma into the Union, Congress had extended over the Indian Territory certain chapters of the statutes of Arkansas as contained in Mansfield's Digest, published in 1884. Among the Arkansas laws thus extended over to the Indian Territory, were those relating to the administration of the estates of deceased persons and to guardianship of minors (Sec. 31, Act of Congress, Approved May 2, 1900, 26 Stat. L. 81).

One of the Chapters of Mansfield's Digest thus extended to the Indian Territory was Chapter 73, relating to guardians and curators, and the Act of Congress expressly provided that the United States in the Indian Territory should appoint guardians and curators.

All this was done under the authority of the United States. When the State government was organized it provided in its Constitution and its

statutes its own system for the administration of the estates of deceased persons and guardianship of minors. It created county courts and conferred on them full and complete probate jurisdiction and authorized them to appoint guardians over the estates of minors.

Before the admission of the State into the Union, the Indian Territory was divided into three judicial districts, and the judges appointed under authority of Congress were charged with the duty of administering the laws of the United States in their area. On the admission of the State, the Indian Territory was divided into forty counties and provision was made for a county court and the election of a county judge in each county. The county court and the county judges administer the Constitution and the laws of the State in probate matters, including the guardianship of the estates of minors. Each county court is given the power to appoint guardians of the estate of all minors domiciled in the county.

Section 23 to the Constitution provides for the transfer of proceedings in the matter of the administration of estates and guardianships of minors pending in the United States courts in the Indian

Territory to the county courts in the State, and by inference continued in office after Statehood curators appointed under the Arkansas laws. There is nothing in the Constitution or in any act of the Oklahoma Legislature which makes exclusive the powers or jurisdiction of the curators thus continued in existence in the State. So that when the curatorship proceedings which originated on the estate of Allie Daney before Statehood were transferred to the county court of Love County, Oklahoma, that court did not acquire exclusive jurisdiction to order J. J. Eaves, the curator, to sell an oil and gas lease on the land of this minor, but the jurisdiction of that court did become concurrent with the jurisdiction of LeFlore County, Oklahoma, in the matter of the sale of the real estate of this minor.

This precise point was decided by the Supreme Court of Oklahoma, in *Allie D. Burton* v. *Winnie Collie et al., supra.* On this question the court said:

> "The enabling act and Section 23 of the schedule to the Constitution had the effect of continuing the jurisdiction, then being exercised by the Federal Court sitting at Marietta, in the county court of Love County. The right of the county court of Love County to exercise jurisdiction over the subject matter was not made to depend upon the county court of Le-

> Flore County withholding the exercise of its jurisdiction over the same subject matter, nor is the right to exercise probate jurisdiction granted by the two sections (Sections 12 and 13 of the Constitution) to LeFlore County, made to depend upon the county court of Love County withholding its right to exercise jurisdiction over the subject matter situated in LeFlore County. The effect of the enabling act, Section 23 of the schedule to the Constitution. Sections 12 and 13 was to vest concurrent probate jurisdiction over the subject matter involved in this action in the county courts of Love and LeFlore counties."

It appears that the county court of LeFlore County had ordered the sale of a tract of land belonging to the same Indian minor whose lands are involved in this controversy. The land was situated in Love County, and she contended that the fact that the curatorship proceedings in which J. J. Eaves was acting as curator excluded the jurisdiction of the county court of LeFlore County to order the sale of her land, and she sued to set the sale aside on that ground. In refuting that contention the Supreme Court said:

> "The answer to plaintiff's contention is that the constitutional provision does not provide that the exercise of jurisdiction by one court, should exclude the constitutional right of the other court to take jurisdiction over the same subject matter; the Constitution does not ex-

pressly or impliedly provide that any agency or means should impair the jurisdiction granted to either county court; consequently, it would require the adoption of a constitutional amendment by the people to impair the grant made by the original instrument."

The court then refers to a number of other decisions in which it was claimed the court had held that the pendency of administration proceedings or guardianship proceedings in one county excluded every other county in the state from exercising jurisdiction in probate and guardianship matters, and on that point said:

"The court in the Dewalt case did not say that it was the act of invoking the jurisdiction of any county court, that excluded the right of every other county court to exercise jurisdiction in relation to the subject matter. The county court in the Dewalt case was exercising the jurisdiction granted to it by Sections 12 and 13 (of the Constitution) and was the only county court which could exercise jurisdiction in relation to the subject matter by the terms of the Constitution. We, again, repeat that the court in the Dewalt case did not say that it was the act of invoking the jurisdiction of one county court that denied the right to all other county courts to exercise jurisdiction in relation to the same subject matter. There was no cause pending in relation to the subject matter involved in the Dewalt case, in a Federal court, at the time this State was created; consequently, by the terms of the Con-

stitution, as the minor resided in Wagoner County, the county court of that county was the only county court in the State vested with jurisdiction over the subject matter. It was not the act of instituting the guardianship proceedings in the county court of Wagoner county that excluded the right of every other county court to appoint a guardian and order the sale of property belonging to the estate, but it was the fact that no other county court was vested with jurisdiction to act by the terms of the Constitution. * * * The plaintiff undertakes in this case to use the expression made in the cases involving the consideration of the jurisdiction granted by Section 13, as limited by Section 12, as being applicable to the question of the county court succeeding to the jurisdiction then being exercised by the Federal court at the time of the creation of Statehood. If we permitted the plaintiff to give the foregoing cases effect as applied to the question of jurisdiction, continued by Schedule 23, in the county courts as successors to the Federal courts, it would have the effect of destroying the jurisdiction granted by Section 13 to the county courts situated in counties where the minors reside. The plaintiff falls into error through the misconstruction of the language used in the case of *Baird* v. *England*, *supra*, and similar cases."

After pointing out that it was conceded in that case that the domicile of Allie Daney was in LeFlore County, the court said:

"The plaintiff's right to recover must fail, if she stands alone on the proposition of want

of jurisdiction in the county court of LeFlore County. But we will go farther, and consider whether plaintiff may raise the question here, that two actions were pending, at the same time, in separate courts, covering the same subject matter.

"A plea in abatement does not pre-suppose that one of the courts does not have jurisdiction of the subject matter. The plaintiff would not suffer injury in her property or personal rights, if one of the courts did not have jurisdiction. The office of a plea in abatement is to prevent one of the courts, which has jurisdiction, from exercising the same over the particular matter.

"The effect of two courts exercising jurisdiction over the same subject matter was considered in the case of *McDougal* v. *Panther Oil and Gas Co.*, 273 Fed. 113. It was said by the court, that: 'Where two actions between the same parties involving the same cause of action proceeds at the same time in courts of concurrent jurisdiction, it is not the judgment in the action first brought, but the first final judgment, although that may be in the action last brought, that renders the issues *res judicata* in both actions.'

"If a plea in abatement is not offered in one of the pending causes, the judgment first rendered is valid and final.

"The action of the plaintiff is a collateral attack on the judgment rendered by the county court of LeFlore County, which is a court of general jurisdiction, and entitled to be accorded all the presumptions indulged in favor

of the judgment of a district court. *Holmes* v. *Holmes*, 27 Okla. 140, 111 Pac. 220, 30 L. R. A. (N. S.) 920.

"In relation to a collateral attack upon a judgment rendered in the county court, in a probate proceeding, it was said in the case of *Moffet* v. *Jones*, 67 Okla. 171, 169 Pac. 652: 'In order for the plaintiff to prevail, he must establish that the court exceeded its jurisdiction, or that there was a want of jurisdiction to act. The distinction between what is requisite to authorize the court to act at all, and that which is necessary to sustain its action in a particular manner, must not be lost sight of, because it is only these matters, which renders the proceedings void, that are available here.'

"The following cases support the rule: *Pettis* v. *Johnson*, 78 Okla. 277; *Griffin* v. *Culp*, 68 Okla. 310, 174 Pac. 495; *Continental Gin Co.* v. *DeBord*, 34 Okla. 66; *Blackwell* v. *McCall*, 54 Okla. 96; *Rice* v. *Theimer*, 45 Okla. 618; *Rice* v. *Woolery*, 38 Okla. 199; *Edwards* v. *Smith*, 42 Okla. 544; *Cushing* v. *Cummings*, 72 Okla. 176, 179 Pac. 762."

Point One,

under which, beginning at page 11 of the brief for appellees, they make the contention that J. J. Eaves, the curator, was the only person empowered by law to execute an oil and gas lease on the land in controversy, since the decision of the *Burton* v. *Collie* case, *supra*, will no doubt be abandoned by counsel for appellees.

Point Two,

beginning at page 25 of the brief for appellees, in which they contend that two separate and distinct guardianships or curatorships cannot exist at the same time for one and the same person, will also in all probability be abandoned, since the Supreme Court of Oklahoma in the decision referred to above has held that it is competent for a guardianship of the estate of this minor to exist in the county of the residence or domicile of the ward at the same time a curatorship of her estate of the same was pending in Love County. Likewise, counsel for appellees will probably abandon their contentions under Point Three, beginning at page 33 of their brief. Under this point they stress the exclusive validity of the oil and gas lease executed by J. J. Eaves as curator of Allie Daney and the invalidity of the oil and gas lease by A. N. Thomas, to Dunn and Gillam, characterized him as "*a pseudo or counterfeit guardian,*" and they say that a lease executed by such a guardian, no matter how fraudulently obtained, created no actionable wrong in favor of Allie Daney. Under this point they also assert that Dunn and Gillam occupied no fiduciary relation to Allie Daney, and having obtained nothing from her by virtue of the Thomas lease cannot

be held as trustees of any property or right, or interest acquired by them. We submit that the basis for all of the argument put forth under point three has been removed by the decision in the *Burton* v. *Collie* case, *supra*, and that this is particularly true with reference to the contention that Dunn and Gillam acquired no rights under the Thomas lease and that they therefore occupied no fiduciary relationship with reference to the estate of Allie Daney.

The authorities cited by us at pages 39 to 44 and 79 to 85 of our original brief sustain the proposition that the fraud which entered into the procurement of the lease in this case rendered the lease illegal and void insofar as the lessees Dunn and Gillam are concerned; illegal and void, regardless of any injury or absence of injury which the estate of the minor sustained. The record, however, as pointed out in our original brief, shows conclusively that the estate of the minor did suffer pecuniary loss to the extent of many thousands of dollars by reason of the fraud committed by the guardian and the lessees (see pages 67 to 86, original brief for appellant).

Second Proposition.

The Bill of Complaint is entirely sufficient to warrant recovery against Dunn and Gillam in the nature of an accounting for the profits made by them on account of the fraudulent oil and gas lease procured by them and A. N. Thomas, as guardian of the Indian minor, Allie Daney.

The charge in the brief of the appellees that the complainant has shifted its base and is now asking for different relief against Dunn and Gillam from that prayed for in the bill of complaint is not justified. We are now seeking against Dunn and Gillam the relief prayed for in the bill. All the facts which constitutes the fraud committed by them in procuring the lease are set forth in detail in the bill and all the allegations contained in the bill were abundantly proven on the trial except that the Bullhead Oil Company had knowledge of the fraud at the time the lease was assigned to it and except the further allegation that all of the other defendants other than Dunn and Gillam, who were stockholders in the company, likewise had knowledge of the fraud.

The trial court held that the evidence did not sustain the charge that these parties had knowledge of the fraud and that they were innocent holders of the lease and the stock held by them in the com-

pany. Dunn and Gillam were the only defendants who were guilty of committing fraud in the procurement of the lease. They did not complain in the trial court of the insufficiency of the allegations of the bill charging fraud against them, nor did they object to the introduction of the evidence which sustained the charge of fraud.

The bill of complaint contained all of the allegations necessary and proper in an equitable action to cancel the fraudulent oil and gas lease and to recover the land for the Indian minor, and if the evidence on the trial had not failed to show notice of the fraud by the Bullhead Oil Company the lease would have been cancelled and the land recovered by the minor. The fact that Dunn and Gillam, the fraudulent lessees, assigned the lease to an innocent purchaser for value from whom they concealed the fraud committed by them in procuring the lease does not prevent a court of equity from pursuing the equitable remedies against them in the nature of an accounting for all profits derived them in the transaction.

The authorities on this proposition are cited in our brief, at pages 88 to 95, and abundantly sustain the right of the complainant to an accounting against Dunn and Gillam.

To meet the possibility that it might appear from the evidence that the Bullhead Oil Company was an innocent purchaser for value of the lease there was inserted a prayer for alternative relief against Dunn and Gillam, in the fifth paragraph of the bill, wherein the complainant prays that if for any reason the court should hold that the lease described in paragraph five (bill of complaint) and shown in Exhibit A, cannot be cancelled, then plaintiff prays that the defendant stockholders be adjudged the holders of the said stock respectively in trust for said Allie Daney, and that Allie Daney be declared the rightful owner thereof and that plaintiff be awarded the custody thereof for her use and benefit. "* * * And that the defendants who are or at any time have been stockholders of the Bullhead Oil Company be required to account for all moneys received by them, respectively, either as dividends or as proceeds of sales of their stock." This specific prayer is followed by a general prayer for such other and further relief as the plaintiff may be entitled to in equity and good conscience (Tran. 15-16).

If, however, is should now appear that there was any defect of allegation in the bill of complaint

this Court would treat it as having been amended to conform to the proof so as to enable the court to award the complainant all the relief justified by the facts.

On the proof as found by the trial court clearly it would be entirely equitable and in keeping with good conscience for the court to hold Dunn and Gillam to an accounting for the profits made by them on account of the fraudulent transaction disclosed by the evidence. This includes their part of the $90,000, paid as the first dividend (Tran. 166), and all other dividends received by them, and also includes the $75,000 which J. Robert Gillam received on the sale of his stock to Jake L. Hamon. On the other hand, it would be highly inequitable for Dunn and Gillam, the prepetrators of the fraud, to be permitted to escape with the profits made by them out of the transaction solely because by their machinations the lease had been assigned to an innocent purchaser and the complainant's right to have it cancelled thereby defeated.

Third Proposition.

The compromise and settlement made by the Attorney General and approved by the Secretary of the Interior with the Bullhead Oil Company and certain of its stockholders other than Dunn and Gillam and

their wives did not in any way affect the cause of action alleged in the Bill of Complaint against Dunn and Gillam and their wives, nor discharge Dunn and Gillam from their liability for an accounting for the profits received by them from the fraudulent oil and gas lease.

The final decree was rendered in this case in the court below on June 7, 1921, dismissing the government's bill as to all of the defendants. On August 22, 1921, the Bullhead Oil Company submitted an offer in writing to the Attorney General to compromise the case on the payment of $45,000, for the benefit of the Indian minor, and $12,500 as attorney's fees. This offer contained the condition that "in any appeal which the United States may prosecute from the decision of the United States Court for the Eastern District of Oklahoma, in the above styled cause, to the Circuit Court of Appeals, or to the Supreme Court of the United States, the United States will neither ask nor insist upon a reversal of said cause for a recovery against the Bullhead Oil Company or against any of the defendants in said cause save and except T. H. Dunn, N. E. Dunn, J. Robert Gillam and Mrs. J. Robert Gillam, and that it will not insist upon any judgment imposing a trust upon any of the stock in the Bullhead Oil Company, heretofore

owned by J. Robert Gillam or Mrs. J. Robert Gillam, and assigned to Jake L. Hamon, but will insist upon a money judgment as against them for whatever amount the testimony may show should be awarded'' (Tran. 256-258).

The proposition was duly accepted and has been fully executed. The trial court had expressly held that the Bullhead Oil Company and the other defendants for whom the compromise was made, had not in any way participated in the fraud committed by Dunn and Gillam in procuring the lease and that they were innocent purchasers of the lease and the stock owned by them in the Bullhead Oil Company.

The trial court had also held that Dunn and Gillam were the only parties to the action who were guilty of fraud in the procurement of the lease, except A. N. Thomas, the faithless guardian. Clearly, in such a situation the complainant had the right to acquiesce in the decision of the trial court in holding that the defendants for whose benefit the compromise was made were innocent purchasers for value of the lease and stock in the company.

The complainant could have given effect to the conclusion of the trial court on that question by

failing to assign as error the action of the court in holding these parties to be innocent purchasers for value.

On the other hand, the defendants for whose benefit the compromise was made had the undoubted right to protect themselves against the possibility that the decision of the trial court on that question might be reversed, by paying to the complainant the sums of money mentioned in the offer of compromise. These transactions resulting in the settlement of the case among the innocent and righteous litigants were not subject to control by Dunn and Gillam, the guilty prepetrators of the fraud; and clearly, under the conditions then existing, the complainant had the right to continue the litigation against Dunn and Gillam and to appeal from the decision of the trial court discharging them from liability for an accounting for the profits derived by them from the oil and gas lease.

The bill of complaint alleged that all of the defendants were joint tort feasors, in the perpetration of the fraud which resulted in the execution of the lease and its assignment to the Bullhead Oil Company and the issuance of the stock in that company. The Circuit Court of Appeals held that the

complainant had the right to settle with some of the alleged joint tort feasors and forego litigation as to them, and cited *Carey* v. *Bilby*, 129 Fed. 203; *Barry* v. *Conklin*, 268 Fed. 177, and also held that the complainant had the right to reserve its cause of action against Dunn and Gillam.

Clearly, the complainant has that right, but Dunn and Gillam and their wives now insist that the compromise was detrimental to them because, being stockholders in the Bullhead Oil Company, the complainant had no right to take part of the money to which they were entitled as stockholders in that company and still prosecute the appeal against them.

The answer to that contention is that if Dunn and Gillam procured the oil and gas lease by fraud and their wives paid nothing for the stock, the oil and gas lease was at all times void as to them. The authorities cited at pages 39 to 44 of our original brief show conclusively that Dunn and Gillam at all times held the oil and gas lease and the stock which they claim in the Bullhead Oil Company as trustees for the use and benefit of Allie Daney. Their position on this point certainly ought not to appeal to a court of equity. Their counsel now

admit they procured the lease by fraud and that they carried the guilty purpose to perpetrate the fraud in their minds for more than two years, until in the months of August and September, 1915, they consummated the fraudulent arrangement by paying to the faithless guardian the bribe money, consisting of $3,500 and a Saxon automobile.

These are the ultimate facts and they should control a court of equity in rendering its decision.

From the time the original oil and gas lease was executed on August 18 or 19, 1913, and the legal title was held in the name of Dunn and Gillam until August and September, 1915, when they finally consummated the fraudulent transaction, Dunn and Gillam were trustees of the beneficial interest in the lease and in the stock of the company for the estate of Allie Daney, as shown by the authorities cited in our original brief. A court of equity considers as having been done that which good conscience requires should be done, and that rule as applied to the facts in this case requires the court to treat the lease and the stock held by Dunn and Gillam as having been assigned to Allie Daney. Under this theory of the case, which is manifestly

the correct one, Dunn and Gillam never owned any stock in the Bullhead Oil Company and whatever stock they held in that company was subject to a trust in favor of Allie Daney. Hence, Dunn and Gillam were not in any respect whatever injured by the compromise complained of.

Respectfully submitted,

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Attorneys for United States of America.

APPENDIX.

(Filed in Supreme Court of Oklahoma, January 7, 1925. William M. Franklin, Clerk.)

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA.

Allie Burton, Plaintiff in Error, vs. Winnie Collie et al., Defendants in Error.—No. 14,841.

SYLLABUS.

1. The effect of the Enabling Act and Section 23 of the schedule of our Constitution, was to cause the county courts to succeed the Federal courts, situated in the counties of the particular county courts, in the exercise of probate jurisdiction, which was being administered by the Federal courts at the time this State was created.

2. The general grant of probate jurisdiction as expressed by Section 13 of Art. 7, and as limited by the provisions of Section 12 of Art. 7 of our Constitution, operated to vest each county court with probate jurisdiction over the subject matter situated in the county.

3. The effect of the terms and provisions of the Enabling Act, Section 23 of the schedule, Sections 12 and 13 of Art. 7, of our Constitution, was to vest probate jurisdiction over the estate of this plaintiff, in the county courts of Love and LeFlore counties.

4. Probate jurisdiction over the estate of the plaintiff was vested in the county courts of Love County and LeFlore County without limitations; consequently, the exercise of jurisdiction over the subject matter by one of the courts did not exclude the right to exercise the constitutional jurisdiction granted to the other court.

5. Record examined. *Held,* to support the judgment of the trial court in favor of the defendants.

Syllabus by Stephenson, C.

Error from the District Court of Love County. Hon. Asa E. Walden, Judge.

Action by Allie Daney Burton in ejectment against Winnie Collie, executrix, Winnie Collie, Queen Sullivan, Clemmie Bailey, Mable Chapman, Jewell Collie, Carson D. Collie, Joe C. Collie and Winnie Collie. Judgment for defendants. Plaintiff brings error.

Affirmed.

Adams & Orr, for plainitff in error; Moore & West, for defendants in error.

Opinion by STEPHENSON, C.: Allie D. Burton, of Indian blood, plaintiff in error, who was plaintiff below, was the owner by inheritance of the lands involved in this action. The lands were situated in the southern Federal district. The plain-

tiff, who was a minor, resided with her father in that portion of the central Federal court district now known as LeFlore County. J. J. Eaves was appointed guardian of the plaintiff by the Federal court, sitting at Marietta, in the southern district, Nov. 8, 1905. This guardianship cause was pending in the Federal court at Marietta when Statehood was created, and was so pending when the county court of LeFlore County on or about Aug. 18, 1908, appointed the father of plaintiff as her guardian, and ordered the sale of the lands involved herein.

The county court of Love County obtained jurisdiction of the guardianship proceeding as successor to the Federal court's probate jurisdiction, sitting at Marrietta, in Love County. The plaintiff commenced an action in ejectment against the defendants for the possession of the lands involved in this action, which were sold on the order of the county court of LeFlore County. The defendants are in possession of the lands and claim ownership by a deed of grant from the purchaser at the guardianship sale. The plaintiff does not allege that fraud was committed in the sale of the premises through the county court of LeFlore County,

nor is it asserted that the purchase price paid for the land was inadequate. The plaintiff rests her right of possession upon the single proposition that the county court of LeFlore County was without jurisdiction of the subject matter at the time the sale was ordered. The plaintiff rests her allegation that the court was without jurisdiction of the subject matter, upon the proposition that a guardianship cause was pending in the county court of Love County at the time her father was appointed as her guardian, in LeFlore County, and at the time the court ordered the sale of the real estate involved herein.

The cause came on for trial and was submitted to the court upon the foregoing propositions. The trial resulted in a judgment for the defendants and the plaintiff has brought error to this court.

The plaintiff rests her right to the reversal of the cause upon the proposition, that the county court of LeFlore County was without jurisdiction to order the sale of the property.

The plaintiff is entitled to a reversal of the cause if she is correct in the assertion that the county court of LeFlore County was without jurisdiction of the subject matter.

Section 1 of Art. 7 of our Constitution determines the lodgment of the judicial power of the State in the following language:

> "The judicial power of this State shall be vested in the Senate sitting as a court of impeachment, a Supreme Court, District Courts, County Courts, courts of Justices of the Peace, Municipal Courts, and such other courts, commissions or boards, inferior to the Supreme Court, as may be established by law."

Probate jurisdiction was exercised, formerly, in the chancery courts of England, as an equitable proceeding. An act of parliament, later, divested the chancery court of probate jurisdiction, in part, and vested the subject matter in the spiritual court. A portion of the probate jurisdiction was left in the chancery courts. The act divesting the chancery court of a portion of its probate jurisdiction was strictly construed by the courts. The rule of construction was, that the spiritual court took only such probate jurisdiction as was expressly granted, or was necessary to give effect to the express grant of jurisdiction. Legal and equitable jurisdiction is lodged in our district courts; consequently, if probate jurisdiction was not expressly granted by the Constitution to some other court, our district court would administer probate juris-

diction through its equitable jurisdiction under the provisions of Section 1, *supra;* Pomeroy's Equity Jurisprudence, 2nd ed., Sec. 1154, page 1745; *Rosenberg* v. *Frank,* 58 Calif. 387.

The fact that the exercise of probate jurisdiction is in the nature of an equitable proceeding, explains the reason why this court said in *Dewalt* v. *Cline,* 35 Okla. 197, 128 Pac. 121, "that the county court having acquired jurisdiction of the subject matter had jurisdiction co-extensive with the State in the management and control of the minor's or decedent's estate." A recognized doctrine in equitable jurisprudence is that the court in an equitable action, relating to a trust, or in the administration of a trust, estate, is authorized to give its orders and judgments effect beyond its territorial jurisdiction, if the parties involved have been personally served and are before the court. *Cole* v. *Cunningham,* 133 U. S. 107, 33 U. S. (L. ed) 536; *Harris* v. *Pullman,* 84 Ill. 20, 25 Am. Rep. 416; *Fall* v. *Fall,* 75 Nebr. 120, 113 N. W. 176, 121 A. S. R. 767; *Pillow* v. *S. W. Virginia Imp. Co.,* 92 Va. 144, 23 S. E. 32, 53 A. S. R. 804; *Proctor* v. *Proctor,* 215 Ill. 275, 74 N. E. 145, 106 A. S. R. 168, 2 Ann. Cas. 819, 69 L. R. A. 673; *Wilhite* v.

Skelton, 149 Fed. 67 (C. C. A.); *British So. Africa Co.* v. *De Beers Consol. Mines* (Eng. case), 20 Ann. Cas. 461.

The county court, in a guardianship cause, or administration cause, has the interested parties before it. It may enter its orders effecting the interests of the parties in the property involved in the estate situated in any county in the State. This power does not flow from any express constitutional or statutory grant to the county court. The power of the court to give extra territorial effect to its orders flow from the nature of the proceeding. But it must be borne in mind, as we have said before, that the constitutional or statutory grants of probate jurisdiction to the county court should be strictly construed. The fact that probate jurisdiction is in the nature of an equitable proceeding does not authorize the county court to exercise a greater jurisdiction than that granted to it by the express provisions of the Constitution, or that necessary to give effect to the powers expressly granted.

Section 13 of Art. 7, of our Constitution grants probate jurisdiction to the county court, and is in the following language:

> "The county court shall have the general jurisdiction of a probate court. It shall probate wills, appoint guardians of minors, idiots, lunatics, persons *non compos mentis,* and common drunkards; grant letters, testamentary and of administration, settle accounts of executors, administrators, and guardians; transact all business appertaining to the estates of deceased persons, minors, idiots, lunatics, persons *non compos mentis,* and common drunkards, including the sale, settlement, partition, and distribution of the estates thereof."

It will be observed that the grant of probate jurisdiction is general to all county courts of the State. No distinction is made in relation to particular subject matter as between the several county courts to be established. The effect of the general language as used, is to vest all county courts with probate jurisdiction without reference to the location of the particular subject matter. The effect is, to make the jurisdiction of all county courts concurrent in relation to any subject matter. The effect of this general language would authorize any county court of the State to entertain an application for the appointment of a guardian for minors residing in Oklahoma County. The language of Section 13, *supra,* is making a general grant of probate jurisdiction to the county courts, corresponds to the language used in Section 10, Art. 7,

in making the general grant of jurisdiction to the district courts. The section in part reads in the following language:

> "The district courts shall have original jurisdiction in all cases, civil and criminal, except where exclusive jurisdiction is by this Constitution, or by law, conferred on some other court."

While the plaintiff may institute his action in any district court of the State for the recovery of a debt against a defendant, the Legislature has the power to compel the plaintiff to invoke the jurisdiction of some district court convenient to the residence of the defendant. The venue statute creates a personal privilege in favor of the defendant, which he may assert or waive. So, the venue statutes do not destroy the jurisdiction of the subject matter granted to all other district courts of the State. The plaintiff may, after the passage of the venue statute, institute his action in any district court of the State, unless the defendant asserts his personal privilege to have the cause tried in the district court within the established venue. Since all district courts in the State have jurisdiction of the subject matter, the plaintiff may institute an action in more than one court covering the same

subject matter. The remedy of the defendants would be to file a plea in abatement in one of the actions. *Burns* v. *Smith,* 21 Mont. 251, 53 Pac. 742; 69 A. S. R. 653; *Lamberton* v. *Pereles,* 87 Wis. 449, 58 N. W. 776; 23 L. R. A. 824.

A guardianship action is a proceeding in the interest of the minor and his estate. The guardian takes the minors into court with him by the application, which invokes the action of the court's jurisdiction over the subject matter submitted. *Moffer* v. *Jones,* 67 Okla. 171, 169 Pac. 652; *Ross* v. *Breene,* 88 Okla. 37, 211 Pac. 422.

The general grant of jurisdiction to the county courts of the State might result in an action covering the same subject matter being instituted and maintained in two courts at the same time, but the guardian in each action has his remedy by way of filing a plea in abatement in the other action.

The Federal Constitution makes a grant of general jurisdiction to all the Federal courts of torts effecting personal rights in certain cases. The constitutional grant of jurisdiction does not confine its exercise to any particular court by reason of territorial location of the subject matter. Congress passed an act requiring certain actions in-

volving torts to be instituted and maintained in the Federal court, either, in the district of the residence of the plaintiff or that of the defendant. This act was a venue statute for the benefit of the defendant. It did not destroy the constitutional grant of general jurisdiction by the terms of the Constitution. The defendant might assert or waive the personal privilege created for his benefit by the venue statute. The plaintiff might maintain his action in any Federal court of the United States, after the passage of the venue statute, if the defendant did not assert his personal privilege. *General Investment Co.* v. *Lake Shore*, 260 U. S. 261, 67 L. ed. 244; *Lee* v. *C. & O. R. R. Co.*, 260 U. S. 653, 67 L. ed. 443.

We have discussed the effect of the general terms or grant of jurisdiction as expressed by Section 13, *supra*, without reference to any constitutional limitation. We have done this for the reason that the general grant of jurisdiction as contained in Section 13, *supra*, corresponds with the general grant of jurisdiction to the district court as made by Section 10, *supra*, and the general grant of jurisdiction as made by the Federal Constitution to the Federal courts.

A probate proceeding would be a civil action, if probate jurisdiction had remained in the district courts. The fact that one action was pending in some district court, would not destroy the constitutional jurisdiction of other district courts in relation to the same subject matter.

If a probate action was pending in more than one district court covering the same subject matter, the remedy of the proper party would be to file a plea in abatement in the other action. *Lamberton* v. *Pereles, supra.*

The Constitution does not provide that the pendency of an action in relation to some particular subject matter should destroy the jurisdiction granted to other courts of the same class in relation to the same subject matter. Since the Constitution does not make a distinction between the administration of general jurisdictional grants as between district courts, and county courts, the county court would be governed by the same rule that would apply in district courts.

We again refer to the question that the grant of probate jurisdicton to the county court must receive strict construction. It will be observed that Section 13, *supra,* authorizes the county court to

probate wills, but the strict rule of construction precludes the county court from construing wills. The specific grant of jurisdiction to the county court to probate wills does not imply the grant of jurisdiction to construe the wills, as the question of construction is aside from the matter of the formal requisites to make a valid will. The question of construction is for the district court, where the equitable jurisdiction remains to construe wills. We might say that the express grant of Section 13, has left in the district court that portion of its original probate jurisdiction to construe wills.

We have discussed Section 13, *supra*, as a general grant of probate jurisdiction to the county courts, for the reason that the Enabling Act and Section 23 of the schedule to the Constitution provided that the county court of Love County should succeed the Federal court sitting at Marietta, in the exercise of jurisdiction in pending probate causes. Jurisdiction of the subject matter was so continued in the county court of Love County, although there should be a constitutional limitation of the general grant contained in Section 13, *supra*. The general grant of probate jurisdiction as made by Section 13, *supra*, is limited by the terms and

provisions of Section 12, of Art. 7, in the following language:

> "The county court, *co-extensive with the county,* shall have *original* jurisdiction in all probate matters, and until otherwise provided by law, shall have concurrent jurisdiction with the district court in civil cases in any amount not exceeding One Thousand Dollars, exclusive of interest."

The effect of Section 12 is to limit the general jurisdiction as granted by Section 13, to the appointment of guardians for minors, incompetents, lunatics, etc., who reside in the county in which the court is situated. Section 13 authorizes the county court to control the estates of minors, and to order the sale of their interest in lands. The effect of Section 12, as a limitation, is to confine each county court to the exercise of probate jurisdiction over minors residing in the county, but the subject matter being in the nature of an equitable proceeding, the court is authorized to make orders and enter judgments effecting lands of minors, which are situated beyond the territorial limitations of jurisdiction. Consequently, the expression of the court in the Dewalt case, "that the appointment of a guardian or an administrator gives the court control over the lands belonging to the estate where-

ever situated in the State." The power to so deal with the lands of the minors, does not flow from an express constitutional grant, but inheres in the nature of the subject matter submitted to the court. When these two sections are construed together, the effect is to confine the jurisdiction of each county court to the subject matter situated within the county, subject however, to the equitable rule applying in the administration of a trust. The right of the county court to exercise such jurisdiction over the subject matter situated in the county is not made to depend upon any condition, other than the residence of the minor in the county. The sections do not authorize the Legislature to change or modify the jurisdiction vested in the county courts by the two sections. "The Enabling Act and Section 23 of the schedule to the Constitution had the effect of continuing the jurisdiction, then being exercised by the Federal court sitting at Marietta, in the county court of Love County. The right of the county court of Love County to exercise jurisdiction over the subject matter *was not made to depend upon the county court of LeFlore County withholding the exercise of its jurisdiction over the same subject matter, nor is the right to ex-*

ercise probate jurisdiction granted by the two sections to LeFlore County made to depend upon the county court of Love County withholding its right to exercise jurisdiction over the subject matter situated in LeFlore County. The effect of the Enabling Act, Section 23 of the schedule of the Constitution, Sections 12 and 13, was to vest concurrent probate jurisdiction over the subject matter involved in this action in the county courts of Love and LeFlore counties.'' No limitations are contained in the several sections in relation to either county court having exclusive jurisdiction in the exercise of its right of jurisdiction over the subject matter. It is probably true that the framers of the Constitution may have contemplated that the jurisdiction of both courts might be invoked in the control and management of the subject matter, in this and similar cases, but they no doubt, intended that the jurisdiction granted by the Constitution should be administered in accordance with the rules of civil practice as existed at common law, and and as contained in the statutes adopted by the Constitution. The effect of the rules of civil procedure, in such a situation, was to give any complaining party the right to abate one, or the other of the proceedings.

But the complaint of the plaintiff is not that both courts attempted concurrently, to exercise jurisdiction to sell the property. The plaintiff rests her right to recover in this action upon the proposition that the county court of LeFlore County did not have jurisdiction of the subject matter, and the right to order the sale of the lands involved in this action.

The plaintiff seeks to avoid the effect of the constitutional provisions granting jurisdiction of the subject matter to the county court of LeFlore county, by asserting that the exercise of jurisdiction over the same subject matter by the county court of Love County, excluded the right of the county court of LeFlore County to order the sale. The answer of the plaintiff in this respect, is equivalent to the claim on the part of the plaintiff, that the act of invoking the jurisdiction of Love County, had the effect of destroying the constitutional jurisdiction of LeFlore County. The answer to plaintiff's contention, is that the constitutional provision does not provide that the exercise of jurisdiction by one court, should exclude the constitutional right of the other court to take jurisdiction over the same subject matter; the Constitution does

not expressly or impliedly provide that any agency or means should impair the jurisdiction granted to either county court; consequently, it would require the adoption of a constitutional amendment by the people to impair the grant made by the original instrument.

The several sections of the Constitution should be construed to give effect to the several provisions according to the expressed or apparent intention of the framers of the Constitution, according to the nature of the subject matter to which the several sections relate. We would not be justified in reading an exception by implication into these several sections, which had the effect of destroying the jurisdiction of one of the courts, granted to the two county courts by the express provisions of the several sections. *State* v. *Hooker*, 22 Okla. 712, 98 Pac. 964; *DeHasque* v. *A. T. & S. F. Ry. Co.*, 68 Okla. 123, 173 Pac. 73; *Leech* v. *State*, — Okla. —, Criminal Court, page, 188 Pac. 118. This court in the Dewalt case used the following expression:

> "The county court in acquiring jurisdiction of the estate or *rem* had jurisdiction co-extensive with the State in the settlement of the estate of the decedent and the sale and distribution of his real estate, *and excluded the jur-*

isdiction of the county court of every other county."

The court in the Dewalt cause did not say that it was the act of invoking the jurisdiction of any county court, that excluded the right of every other county court to exercise jurisdiction in relation to the subject matter. The county court in the Dewalt case was exercising the jurisdiction granted to it by Secs. 12 and 13 and was the only county court which could exercise jurisdiction in relation to the subject matter by the terms of the Constitution. We again repeat that the court in the Dewalt case did not say that it was the act of invoking the jurisdiction of one county court that denied the right to all other county courts to exercise jurisdiction in relation to the same subject matter. There was no cause pending in relation to the subject matter involved in the Dewalt case, in a Federal court, at the time this State was created; consequently, by the terms of the Constitution as the minor resided in Wagoner County, the county court of that county was the only county court in the State vested with jurisdiction over the subject matter. It was not the act of instituting the guardianship proceedings in the county court of Wagoner County that ex-

cluded the right of every other county court to appoint a guardian and order the sale of property belonging to the estate, but it was the fact that no other county court was vested with jurisdiction to act by the terms of the Constitution.

The language used in the Dewalt case was given effect in the case of *Baird* v. *England*, — Okla. —, 205 Pac. 1098, in the following language:

> "The county court of the county in which application is first made for letters testamentary or of administration in any the cases mentioned above shall have jurisdiction co-extensive with the State in the settlement of the estate of the decedent and the sale and distribution of his real estate and excludes the jurisdiction of the county court of every other county."

The same expressions were given effect in the cases of *Parmenter* v. *Rowe*, — Okla. —, 200 Pac. 683; *Hathoway* v. *Hoffman*, 53 Okla. 73, 153 Pac. 184; *Welch* v. *Facht*, — Okla. —, 171 Pac. 731; L. R. A. 1918D, page 1163; *Monahawee et al.* v. *Hazelwood, County Judge*, 81 Okla. 69, 196 Pac. 937; *Crowell* v. *Hamilton*, — Okla. —, 209 Pac. 395.

The foregoing cases involve the consideration of the question of jurisdiction granted by Section 13, as limited by Section 12. The consideration of the

question of the jurisdiction granted to the county court by schedule 23 of the Constitution, was not involved in the foregoing cases.

The plaintiff undertakes in this case to use the expression made in the cases involving the consideration of the jurisdiction granted by Section 13 as limited by Section 12, as being applicable to the question of the county court succeeding to the jurisdiction then being exercised by the Federal court at the time of the creation of Statehood. If we permitted the plaintiff to give the foregoing cases effect as applied to the question of jurisdiction, continued by Schedule 23, in the county courts as successors to the Federal courts, it would have the effect of destroying the jurisdiction granted by Sec. 13, to the county courts situated in counties where the minors reside. The plaintiff falls into error through the misconstruction of the language used in the case of *Baird* v. *England, supra,* and similar cases.

The plaintiff has attacked the right of the defendants' possession of the lands involved in this suit by a law action. There are no equitable questions involved. The plaintiff must stand or fall upon the ground she has selected to offer combat against

her adversaries. She has elected to make her right of recovery to depend upon the want of jurisdiction in the county court of LeFlore County, to order the sale of the lands. The plaintiff admits that she was a resident at all times of LeFlore County, consequently, the latter court had control and jurisdiction of the subject matter, and the power to order the sale. The admission of the plaintiff that she was a resident of LeFlore County concedes jurisdiction in the county court of LeFlore County to appoint her father as her guardian, and to order the sale of the property. Therefore, the plaintiff has failed to establish the fact, which she charges, as supporting her right to recover. The plaintiff's right to recover must fall, if she stands alone on the proposition of want of jurisdiction in the county court of LeFlore County. But we will go farther and consider whether plaintiff may raise the question here, that two actions were pending, at the same time, in separate courts covering the same subject matter.

A plea in abatement does not pre-suppose that one of the courts does not have jurisdiction of the subject matter. The plaintiff would not suffer injury in her property or personal rights, if one of

the courts did not have jurisdiction. The office of a plea in abatement is to prevent one of the courts, which has jurisdiction from exercising the same power over the particular matter.

The effect of two courts exercising jurisdiction over the same subject matter was considered in the case of *McDougal* v. *Panther Oil & Gas Co.*, 275 Fed. 113. It was said by the court, that;

> "Where two actions between the same parties involving the same cause of action proceeds at the same time in courts of concurrent jurisdiction, it is not the judgment in the action first brought, but the first final judgment, although that may be in the action last brought, that renders the issues *res judicata* in both actions."

If a plea in abatement is not offered in one of the pending causes, the judgment first rendered is valid and final.

The action of the plaintiff is a collateral attack on the judgment rendered by the county court of LeFlore County, which is a court of general jurisdiction, and entitled to be accorded all the presumptions, indulged in favor of the judgment of a district court. *Holmes* v. *Holmes*, 27 Okla. 140, 111 Pac. 220, 30 L. R. A. (N. S.) 920.

In relation to a collateral attack upon a judgment rendered in the county court, in a probate proceeding, it was said in the case of *Moffer* v. *Jones,* 67 Okla. 171, 169 Pac. 652:

> "In order for plaintiff to prevail, he must establish that the court exceeded its jurisdiction, or that there was a want of jurisdiction to act. The distinction between what is requisite to authorize the court to act at all, and that which is necessary to sustain its action in a particular manner, must not be lost sight of, because it is only those matters, which renders the proceedings void, that are available here."

The following cases support the rule: *Pettis* v. *Johnson,* 78 Okla. 277; *Criffin* v. *Culp,* 68 Okla. 310, 174 Pac. 495; *Continental Gin Co.* v. *DeBord,* 34 Okla. 66; *Blackwell* v. *McCall,* 54 Okla. 96; *Rice* v. *Theimer,* 45 Okla. 618; *Rice* v. *Woolery,* 38 Okla. 199; *Edwards* v. *Smith,* 42 Okla. 544; *Cushing* v. *Cummings,* 72 Okla. 176, 179 Pac. 762.

It is recommended that the judgment of the trial court be affirmed.

Per Curiam: The foregoing opinion by the Commission has been carefully examined by the Court, and finds that it should be adopted as the opinion of the Court.

Therefore, it is ordered by the Court that the opinion be and is hereby adopted as the opinion of the Court.

I, William M. Franklin, clerk of the Supreme Court of the State of Oklahoma, do hereby certify that the above and foregoing is a full, true and complete copy of the opinion of said Court in the above entitled cause, as the same remains on file in my office.

In witness whereof I hereunto set my hand and affix the seal of said Court, at Oklahoma City, this 2nd day of February, 1925.

(Seal)

WILLIAM M. FRANKLIN,
By G. W. Satterfield.